

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

CC Docket No. 94-102
RM-8143

**COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association (PCIA)¹ hereby submits these comments in response to the Petition for Reconsideration of the Federal Communications Commission's Third Report and Order filed by Aerial Communications, Inc., and the Joint Petition for Reconsideration filed by Nokia, Inc., and Motorola, Inc., in the above-captioned proceeding.²

In the Commission's E911 Third Report and Order, the Commission tightened the accuracy requirements for handset-based solutions to an accuracy level of 50 meters for

¹ PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Alliance, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and service the interests of tens of thousands of FCC licenses.

² See *Compatibility with Enhanced E911 Emergency Calling Systems*, CC Docket No. 94-102, *Third Report and Order*, FCC 99-245 (rel. Oct. 6, 1999), published in 64 Fed. Reg. 60126 (Nov. 4, 1999) ("*E911 Third Report and Order*").

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67 percent of all calls to 911 and 150 meters for 95 percent of calls made to 911.³

Regardless of whether a request is made by the Public Safety Answering Point ("PSAP") administrator, carriers implementing a handset-based or hybrid solution must also comply with the following deadlines:

- (1) Begin selling and activating location-capable handsets no later than March 1, 2001;
- (2) Ensure that at least 50 percent of all new handsets activated are location-capable no later than October 1, 2001; and
- (3) Ensure that at least 95 percent of all new digital handsets activated are location-capable no later than October 1, 2002.⁴

In addition, within six months of receiving a PSAP request or by October 1, 2001, whichever is later, a carrier must comply with the following requirements:

- (1) Ensure that 100 percent of all new handsets activated are location-capable;
- (2) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and
- (3) Begin delivering Phase II enhanced 911 service to the PSAP.⁵

The Commission's revised E911 rules also require that within two years of a PSAP request or by December 31, 2004, whichever is later, affected carriers must undertake reasonable efforts to achieve 100 percent penetration of location-capable handsets among its subscribers.⁶ For callers without ALI-capable handsets, carriers must support Phase I

³ 47 C.F.R. § 20.18(g)(2).

⁴ 47 C.F.R. § 20.18(g)(1)(A)-(C).

⁵ 47 C.F.R. § 20.18(g)(2)(A)(i)-(iii).

⁶ 47 C.F.R. § 20.18(g)(2)(B).

requirements and implement other available best practice methods of providing the location of the handset to the PSAP.⁷ Finally, the E911 rules require that licensees employing handset-based location technologies be able to conform to industry interoperability standards designed to enable the location of such phones by multiple licensees.⁸

In contrast, carriers employing network-based location technologies are required to deploy ALI to 50 percent of callers within 6 months of a PSAP request and to 100 percent within 18 months.⁹

In its attempt to justify the various modifications to the E911 rules, the Commission points to representations made to the Commission by a select group of interested parties -- representations that the rest of the industry were never given an opportunity on which to comment. Specifically, in support of increasing accuracy levels, the Commission cites to the Report and Findings of the King County Washington E911 Program hosted by GPS solution vendor IDC, a press release by GPS solution based vendor Lucent, and an *ex parte* presentation by GPS solution based vendor SnapTrack. As Nokia and Motorola correctly observe in their joint petition, the results cited by the Commission in support of its decision to increase accuracy levels "... employed demonstration and experimental equipment, not fully integrated and commercially available handsets operating in real world environments."¹⁰ Clearly, there is not enough evidence at this point to justify the heightened accuracy requirements contained in the

⁷ 47 C.F.R. § 20.18(g)(3).

⁸ 47 C.F.R. § 20.18(g)(4).

⁹ 47 C.F.R. § 20.18(f).

¹⁰ Petition for Reconsideration of Nokia, Inc. and Motorola, Inc., at 6.

new rules. Moreover, as Aerial correctly notes in its Petition, "...[t]he citations used by the Commission... do not support the new accuracy levels adopted by the Commission."¹¹ The lack of verification and compliance methods only serves to further underscore the premature and untested nature of the Commission's revised E911 accuracy requirements.

PCIA agrees with Aerial that both the factual evidence cited by the Commission as its basis for heightening these accuracy requirements as well as the procedural methodology followed by the Commission must be questioned. Consistent with the requirements of the Administrative Procedures Act (APA), the FCC typically promulgates rules in response to a Notice of Proposed Rulemaking.¹² In this particular matter, the FCC seems to have adopted rules in response to a Wireless Telecommunications Bureau request for "Targeted Comment."¹³ Moreover, this request for additional comments was made in response to ALI waiver requests that carriers filed in response to the Wireless Telecommunications Bureau's invitation, not to proposed rules as required under the APA.¹⁴ As a result, PCIA agrees with Aerial that "[t]he Commission's action to increase the accuracy levels without sufficient support in the record constitutes an arbitrary and capricious rulemaking that must be corrected by reinstating the 125 meter accuracy

¹¹ See Petition for Reconsideration of Aerial Communications, Inc., at 2 (Dec. 6, 1999).

¹² See 5 U.S.C. § 553(b) ("General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with the law. The notice shall include: (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved").

¹³ See *Public Notice*, DA 99-1049 (June 1, 1999).

¹⁴ See *Public Notice*, 13 FCC Rcd 24609 (1998).

requirement until the public is given the opportunity to comment on the [refined accuracy] proposals..."¹⁵

PCIA also concurs with Aerial that the Commission's decision to establish different accuracy standards for network- and handset-based location technologies conflicts with Commission's normal practice of enacting rules that create a competitively neutral regulatory environment. Typically, the Commission restrains itself from enacting rules that unfairly advantage one competitor over another.¹⁶ In fact, in the E911 Third Report and Order, the Commission states that "...a policy of technological and competitive neutrality best promotes the public safety and welfare goals of this proceeding..."¹⁷ Yet, one paragraph later, the Commission states that it does "... not believe that public safety or the policy of neutrality require that the rules [it] adopt[s] be identical for both network-based and handset-based technologies."¹⁸ The Commission goes on to note that these rules somehow achieve [its] policy of technological and competitive neutrality, "... not through being identical, but by taking account the differences in these types of technologies that promote public safety."¹⁹

One thing is clear. If the 100-meter location accuracy requirement for 67 percent of calls is sufficient for carriers employing a network-based solution, the same should be

¹⁵ See Petition for Reconsideration of Aerial Communications, Inc., at 3.

¹⁶ See e.g., *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8801 (1997) ("...competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another").

¹⁷ *E9-1-1 Third Report and Order* at ¶81.

¹⁸ *Id.* at ¶82.

¹⁹ *Id.*

true for carriers that choose a handset-based solution. Rules that mandate otherwise clash with the Commission's historical preference for competitive neutrality.

PCIA also supports the joint request by Nokia and Motorola that the Commission reconsider its requirement that carriers begin selling and activating location-capable handsets by March 1, 2001.²⁰ As noted in the joint petition, it is unlikely that a large number of PSAPs will be in a position to handle ALI information prior to October 1, 2001. PCIA also supports the joint petition in so far as it requests that the Commission revise its pre-PSAP request implementation schedule for ALI-capable handsets.²¹ The timeframe mandated by the Commission is clearly unrealistic given the volumes of ALI-capable handsets that would have to be manufactured and distributed in the abbreviated timeframe.

²⁰ See Petition for Reconsideration of Nokia, Inc. and Motorola at 5.

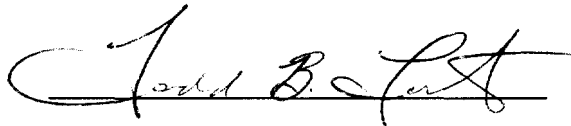
²¹ *Id.* at 5.

Conclusion

PCIA concurs with Aerial and believes that the Commission should reconsider its decision to heighten the Phase II location accuracy requirements. In the interim, PCIA believes that the Commission should reinstate the accuracy standards established in the E911 Reconsideration Order. The public must be given the opportunity, as required by the APA, to meaningfully comment on any future Commission proposal to mandate higher levels of accuracy. PCIA also supports the petition for reconsideration filed by Nokia and Motorola to revise the Commission's current implementation schedule for ALI-capable handsets.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

A handwritten signature in black ink, appearing to read "Mary Madigan Jones", written over a horizontal line.

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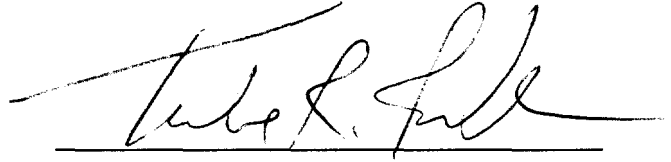
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CERTIFICATE OF SERVICE

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